

Illinois Bell Telephone Company d/b/a)
Ameritech Illinois)
)
Proposed Implementation of High)
Frequency Portion of Loop (HFPL)/Line)
Sharing Service)

Docket No. 00-0393

VERIFIED MOTION TO QUASH SUBPOENA

Ameritech Advanced Data Services of Illinois, Inc. ("AADS"), by its attorney, pursuant to Sections 10-101 of the Public Utilities Act (220 ILCS 5/10-101) and Section 200.390 of the Commission's Rules of Practice (83 Ill. Admin Code 200.390), hereby moves that the Hearing Examiner quash and not issue the proposed subpoena duces tecum proffered by Rhythms Links, Inc. ("Rhythms") in the above-captioned matter. As will be seen, the proposed subpoena is not reasonably required to obtain information that cannot reasonably be obtained through requests for information or other discovery of parties to this docket. In support of this Motion to Quash, AADS states as follows:

1. AADS is a provider of competitive high-speed broadband telecommunications services, including frame relay service, asynchronous transfer mode service, and digital subscriber line (DSL) service. AADS and Rhythms are direct and vigorous competitors with respect to, for example, the offering of DSL services.

2. AADS is not a party to the instant proceeding. AADS respectfully states that it is making this limited appearance by counsel for the sole and specific purpose of moving to quash the requested subpoena duces tecum. AADS does not seek to intervene or to become a party to the instant proceeding.

3. AADS is an affiliate of Illinois Bell Telephone Company d/b/a Ameritech Illinois ("Ameritech Illinois") by virtue of their common ownership by a common corporate parent, Ameritech Corporation. AADS and Ameritech Illinois are separate and distinct corporations. AADS operates independently from Ameritech Illinois, with its own books of account, separate officers and separate operating, marketing, installation and maintenance personnel.

4. Pursuant to the stipulated terms and conditions of its Certificate of Service Authority granted on August 16, 1995, AADS purchases service from Ameritech Illinois at Ameritech Illinois' tariffed rates, or pursuant to an Interconnection Agreement approved by this Commission, or pursuant to arms-length transactions that are made publicly available, without preferences not already generally available to other customers of Ameritech Illinois.

5. Rhythms asserts that Ameritech Illinois has designed its HFPL offering to meet the needs of AADS, as opposed to the needs of unaffiliated competitive local exchange carriers ("CLECs"). AADS cannot speak for Ameritech Illinois (which has denied this claim), but on its own behalf AADS states that it has not requested, encouraged nor accepted an HFPL offering from Ameritech Illinois designed to meet the needs of AADS, as opposed to the needs of unaffiliated CLECs.

6. Rhythms asserts that “the only way to insure” that that Ameritech Illinois has not “designed its HFPL offering to meet the needs of AADS, as opposed to the needs of unaffiliated CLECs,” is to “obtain information regarding how AADS developed its product offerings and network requirements, as well as the terms and conditions under which it is in fact receiving the HFPL from Ameritech.” This is untrue.

7. With regard to the requested subpoena relating to how AADS developed its product offerings and network requirements, discovery directed to Ameritech Illinois alone, a party to this proceeding, is sufficient and probative as to Rhythms’ stated inquiry regarding whether or not Ameritech Illinois designed its HFPL offering to meet the needs of an affiliate, as opposed to the needs of unaffiliated CLECs. Moreover, there is no necessary nexus between how AADS developed its product offerings and network requirements and Ameritech Illinois’ HFPL offering. AADS developed its product offerings as would any other competitive company that takes inputs pursuant to tariff or interconnection agreement from an incumbent LEC. The assumption that a particular product development or network requirements result adopted by AADS proves an inappropriate preference by Ameritech Illinois in HFPL design is speculative; so speculative that the unprecedented burden of the non-party discovery requested by Rhythms is wholly unwarranted, unreasonable and oppressive. Finally, the Hearing Examiner must be mindful that Rhythms and AADS are vigorous competitors, and that the product development and advanced services network information requested by Rhythms from AADS is of the most highly confidential,

proprietary and competitively sensitive nature. It is virtually unprecedented that such information should be required to be divulged by a non-party to an arch competitor. AADS submits that not even a protective order affords sufficient protection to its competitive intelligence under these unique circumstances.

8. With regard to the requested subpoena relating to "the terms and conditions under which" AADS "is in fact receiving the HFPL from Ameritech," Rhythms' assertion that all necessary and probative information relating to this stated line of inquiry cannot be obtained from Ameritech Illinois, a party to this proceeding, rather than AADS, a non-party, is untrue. As the offeror of the HFPL service, Ameritech Illinois presumably has knowledge of the terms and conditions under which it provides the service to AADS. The investigation into parity does not require third-party discovery from AADS. However, it is critical that any confidential, proprietary and/or competitively sensitive information in Ameritech Illinois' possession regarding services that it provides to AADS (to the extent such information is deemed discoverable) be provided to Rhythms only pursuant to a comprehensive protective order such as that proffered by Rhythms in its Verified Application for Subpoena.

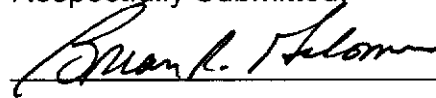
9. AADS does not at this time submit detailed objections to the data and document requests proffered by Rhythms. Such arguments are not ripe in advance of any actual issuance of the requested subpoena by the Hearing Examiner, and AADS reserves its right to file such objections as appropriate at a later time. However, even a cursory examination of the requests demonstrates that they are not reasonably calculated to lead to relevant information regarding

Rhythms' two stated area of inquiry: how AADS developed its product offerings and network requirements; and the terms and conditions under which AADS is in fact receiving the HFPL service from Ameritech Illinois. As examples, Request No. 1 seeks a projection of AADS' DSL service over fiber-fed DLC for the next year. Request No. 2 seeks AADS' future plans regarding subloop unbundling over the next 18 months. Request No. 4 seeks detailed descriptions of how AADS plans to determine if specific customers qualify for retail ADSL service. And, Request No. 14 inquires about AADS' plans to offer DSL services over NGDLCs. These requests are for prospective marketing and service offering information. They represent a fishing expedition for a competitor's confidential, proprietary and/or competitively sensitive data. These requests are not calculated to lead to relevant information regarding Rhythms' two stated area of inquiry, and thus the proposed subpoena is not reasonably required to obtain information that cannot reasonably be obtained through requests for information or other discovery of parties to this docket.

WHEREFORE, AADS respectfully moves that the Hearing Examiner quash and not issue the proposed subpoena duces tecum proffered by Rhythms Links, Inc. in the above-captioned matter.

Dated: October 5, 2000

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Brian R. Gilomen", is written over a horizontal line.

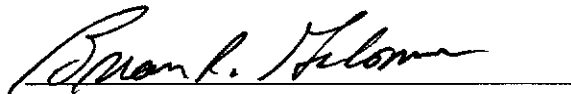
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)
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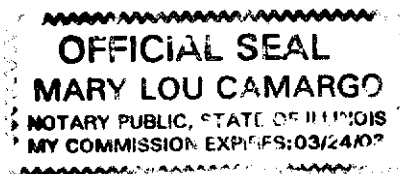
VERIFICATION

I, Brian R. Gilomen, being first duly sworn upon oath depose and say that I am an attorney for Ameritech Advanced Data Services, of Illinois, Inc., a Delaware corporation; that I am authorized to make this Verification on its behalf; that I have read the foregoing Verified Motion to Quash Subpoena by me subscribed and know the contents thereof; and that said contents are true and correct to the best of my knowledge, information and belief.



Brian R. Gilomen
Counsel for Ameritech Advanced Data
Services, of Illinois, Inc.

Subscribed and Sworn
To before me this 5th day
Of October, 2000


Notary Public

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he caused copies of the attached Verified Motion to Quash Subpoena to be served on each of the persons on the attached service by United States Mail, postage prepaid on October 5, 2000.



Brian R. Gilomen

Counsel for Ameritech Advanced Data
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